IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No.253 of 2006

Judgment reserved on:29.6.2007.

Date of decision: 9.7.2007

Amar Singh ....Plaintiff/Petitioner

-Versus-

Pratap Singh and others ….Defendants/Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, ACJ.

Whether approved for reporting? No

For the Petitioner: Mr.Bhupinder Gupta, Senior Advocate with Mr.Janesh Mahajan, Advocate.

For Respondents: Mr.G.D.Verma, Senior Advocate with Mr.B.C. Verma, counsel for respondent No.1.

Deepak Gupta, A.C.J.

This petition is directed against the order dated 28.7.2006 passed by Civil Judge (Junior Division), Jubbal whereby he has rejected the application filed by the petitioner (hereinafter referred to as the plaintiff) under Order 13 Rule 10 CPC for summoning the file No.206/70 decided on 6.4.1971 from the record room.

I have heard Sh.Bhupinder Gupta, learned Senior Counsel for the plaintiff and Sh.G.D.Verma, learned Senior Counsel for the respondent-defendant.

Briefly stated the facts of the case are that the plaintiff filed a suit for declaration to the effect that land measuring 6 bighas 16 biswas comprising khasra No.1430, 1520/1 and 1520/2 was

sanctioned as Nautour to the defendant fraudulently and by mis-representation of fact. It was also prayed that the said sanction be declared as null and void and on this basis decree for permanent injunction was also sought. It would be pertinent to mention that during the pendency of the suit the same was amended and an amended plaint was filed and thereafter the defendants filed written statement as well as counter claim in which defendants prayed for a decree restraining the plaintiff from interfering in the possession of the defendants in khasra No.1046. After the plaintiff had led his evidence and placed the certified copies of the Nautour on record he moved an application under Order 13 Rule 10 CPC for production of the original file whereby Nautour was granted in favour of the defendant. This application was contested and was rejected.

The application has been rejected mainly on the ground that the application is mis-conceived and that the plaintiff did not produce the relevant record at the time of filing of the plaint. I am of the considered view that the order of the learned Civil Judge is virtually a non-speaking and un-reasoned order. Other than giving the contents of the application, the reply and quoting the arguments of the counsel the Civil Judge has virtually not given any reasoning. Order 13 Rule 10(i) of the CPC reads as follows:

> "13(10): **Court may send for papers from its own records or from other Courts---**
>
> (1)The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other suit or proceedings, and inspect the same."

From a bare perusal of the aforesaid provision it is apparent that the powers under Order 13 Rule 10 CPC relate to sending for the records of any Court. This power can be exercised by the Court suo motu or on the application of any party. The main dispute in the present case is with regard to the validity of the nautour granted in favour of the defendant. The plaintiff alongwith the suit has filed a number of documents out of this nautour file only. All that he wants is the production of the original record. In my view the production of the original nautour file will definitely assist the court in deciding the matter.

Order 13 Rule 10(iii) further provides that mere production of the record will not enable the Court to use the same in evidence unless the same is proved in accordance with law of evidence. I fail to understand what prejudice is going to be caused to the defendant by production of the file whereby nautour was granted to the defendant. No doubt this application has been filed after the closure of the plaintiff's evidence but in the present case the defendant has filed a counter claim and therefore the plaintiff has a right to lead evidence in rebuttal to the counter claim. Therefore the proceedings are also not going to be delayed by production of the record.

Keeping in view the aforesaid discussion, I am of the considered view that the order passed by the learned Trial Court is against law and is hereby set-aside. The application filed by the plaintiff for production of the nautour file is allowed. The petition is disposed of accordingly.

CMP No.510 of 2006:

In view of the disposal of the main petition, this application is also disposed of. Stay order dated 7.9.2006 is vacated.

July 9, 2007. **(Deepak Gupta),**
PV **Acting Chief Justice,**